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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,809	10/19/2001	Dietmar Rudolph	20811/0204775-US0	8344
7278	7590	05/20/2008		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER JAMAL, ALEXANDER	
			ART UNIT 2614	PAPER NUMBER
			MAIL DATE 05/20/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/980,809	Applicant(s) RUDOLPH, DIETMAR	
	Examiner ALEXANDER JAMAL	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2-15-2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,6-8,10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Based upon the submitted amendment (8-29-2007), the examiner notes that claims 12,13 have been amended and claims 1-3,5,9 are cancelled.
2. Examiner withdraws the previously stated allowability of claims 7,8,10-13, and submits of a new set of non-final rejections for all claims.
3. As per the included interview summary, examiner notes that applicant has admitted the ‘multi-stage modulator’, ‘internet’, ‘data base storing’, ‘automatic switchover’ and ‘frequency prognosis’ terms in the claims are –not- described in the specification, and are read to be well known terms that one of skill in the art would obviously know how to apply to applicant’s claimed invention (or to any other invention in the same field).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 4,8,12-14,6,7,10,11** are rejected under 35 U.S.C. 102(e) as being anticipated by Kleider et al. (6084919).

As per **claim 4**, Kleider discloses a system that performs a method to improve the quality by controlling the parameters of a digital radio transmission (ABSTRACT, Fig. 5). The method comprises receiver 16 (Fig. 2) adjacent to target area 14 that evaluates quality data via blocks 34,36, to determine parameters C,F,B,P,b that are transmitted automatically to transmitter 12. Kleider discloses that the wireless network may be connected to the internet (Col 1 lines 10-20). The channel classification monitor 26, in combination with block 34 perform a frequency prognosis via transmitted parameters Cce' and F for the purpose of influencing the channel coder 22 and source coder 20 of the transmitter. The parameters are stored in spectrum table memory 27. The parameters also need to inherently be stored at every processing stage of the system and method for the purpose of allowing the digital processing to occur.

As per **claim 8**, it is rejected as per the claim 4 rejection. The multi mode modulator can vary the transmit frequencies of the system (Col 4 lines 30-45).

As per **claims 12,13**, they are rejected as per the claim 8 rejection. The block 34 of Fig. 2 comprises a feedback channel that increases reception quality and coverage reliability by preselecting better coding/modulation.

As per **claim 14**, it is rejected as per the claim 12 rejection. Kleider discloses (Col 4 lines 30-40) that the multi mode modulator can vary the type of modulation. Examiner notes that a QAM modulation (which is well known is spread spectrum communications) may have any number of different stages (carriers). Examiner reads

each of these as a different 'type' and notes that the modulator and channel interleaver would function to vary the number of stages in order to increase transmission quality.

As per **claims 6,10**, the transmission is wirelessly broadcast (Fig. 5).

As per **claims 7,11**, they are rejected as per **claim 4**.

Response to Arguments

1. Applicant's arguments with respect to all claims have been considered but are not persuasive.

As per applicant's comments concerning 'multi-stage modulator', 'internet', 'data base storing', 'automatic switchover' and 'frequency prognosis' (remarks page 6), the examiner notes that applicant has admitted there is no support in the specification showing exactly how the above terms are implemented in a digital radio transmission system. Therefore the examiner contends that one of ordinary skill in the art would know to implement any or all of those things in a digital radio transmission system.

As per applicant's arguments that the prior art does not disclose a feedback path via the internet. The examiner notes that the above rejection cites that Kleider discloses that this system is used over the internet. Furthermore, Kleider discloses that the feedback signal may be in the communications path (which would be the internet).

As per applicant's argument that the prior art does not disclose changing the quantity of modulation stages. Examiner contends that the prior art discloses changing the modulation type.

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The examiner notes that different modulation types comprise different numbers of modulation stages. The examiner further contends that it would have been obvious to change the number of modulation stages of the current modulation type in order to perform the disclosed function of optimizing the communications link for the detected channel response. Examiner further notes that changing the data rate (disclosed in Kleider) would inherently comprise changing the number of modulation stages.

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Jamal whose telephone number is 571-272-7498. The examiner can normally be reached on M-F 9AM-6PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis A Kuntz can be reached on 571-272-7499. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and **571-273-8300** for After Final communications.

/Alexander Jamal/

Primary Examiner, Art Unit 2614

Examiner Alexander Jamal

May 20, 2008